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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

BRANDON RAY BARTELL,

Defendant and Appellant.

C082280

(Super. Ct. No. CM032867)

Following defendant Brandon Ray Bartell's admission to a violation of his probation, the trial court denied probation and sentenced him to four years in prison. On appeal, defendant contends that his sentence must be vacated because the trial court lacked authority to sentence him to prison for an alleged probation violation that occurred after the court-imposed probationary period expired. The People concede the point. We

reverse the judgment, vacate defendant's sentence, and remand the matter with directions to the trial court to discharge defendant from probation.¹

PROCEDURAL BACKGROUND²

On March 2, 2011, defendant was charged by information with two counts of corporal injury to a former cohabitant. (Pen. Code, § 273.5, subd. (a).)³ On June 28, 2011, defendant entered a guilty plea to both counts. On August 9, 2011, the trial court suspended imposition of sentence and placed defendant on formal probation for a term of four years with various terms and conditions, including the condition he serve 90 days in county jail.

Over the next 13 months, the trial court found defendant violated his probation twice. After each violation, defendant's probation was modified and reinstated. The term of defendant's probation, however, was not extended.

On December 18, 2015, a petition for violation of probation was filed alleging defendant violated the conditions of his probation by violating Vehicle Code section 23152, subdivisions (a) and (b) on November 7, 2015. On February 24, 2016, defendant admitted he violated the conditions of his probation. On June 1, 2016, the court denied defendant probation and sentenced him to an aggregate term of four years in prison, consisting of the middle term of three years on the first corporal injury count and one year on the second corporal injury count. The court also imposed various fines and fees and ordered defendant to pay the fines and fees ordered when he was placed on probation.

¹ Because we reverse the judgment, we need not consider defendant's contention certain fines should be struck from the abstract of judgment as unauthorized.

² A recitation of the facts underlying defendant's convictions is unnecessary for the disposition of this appeal.

³ Undesignated statutory references are to the Penal Code.

Defendant filed a timely notice of appeal.

DISCUSSION

Defendant contends, and the People agree, his sentence must be vacated because the trial court lacked authority to sentence him to prison for an alleged probation violation occurring after the court-imposed probationary period expired. We agree.

“Section 1203.3, subdivision (a), empowers the trial court ‘at any time during the term of probation to revoke, modify, or change its order of suspension of imposition or execution of sentence.’ This power includes the power to extend the probationary term. [Citation.] Under section 1203.2(a), the trial court ‘may revoke and terminate such probation if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation officer or otherwise that the person has violated any of the conditions of his or her probation’ ” (*People v. Leiva* (2013) 56 Cal.4th 498, 505.) The trial court, however, cannot find a violation of probation, and then reinstate probation or terminate probation and impose sentence, based on events that occurred after the court-imposed probationary period expired. (*Id.* at pp. 502, 516-518.)

Here, because defendant’s term of probation expired on August 8, 2015, the trial court had no jurisdictional basis to terminate probation and impose sentence based on conduct occurring on November 7, 2015. (*People v. Leiva, supra*, 56 Cal.4th at pp. 502, 516-518.) Accordingly, the judgment is reversed and defendant’s four-year sentence is vacated. The order finding a violation of probation for conduct occurring on November 7, 2015, is void, and defendant is entitled to an order discharging him from probation. (*People v. Tapia* (2001) 91 Cal.App.4th 738, 742, disapproved on another ground in *People v. Wagner* (2009) 45 Cal.4th 1039, 1061, fn. 10.)

DISPOSITION

The judgment is reversed. The four-year sentence imposed on June 1, 2016, is vacated. This matter is remanded to the trial court to discharge defendant from probation.

NICHOLSON, J.

We concur:

RAYE, P. J.

HOCH, J.